

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JENIFER L. BILEAU,	:	
	:	
Plaintiff,	:	
	:	
v.	:	File No. 1:15-cv-00146-jgm
	:	
CAROLYN W. COLVIN,	:	
Commissioner of Social Security,	:	
	:	
Defendant.	:	
_____	:	

MEMORANDUM AND ORDER
(Docs. 11, 18)

Plaintiff Jenifer L. Bileau brings this action under 42 U.S.C. § 405(g) of the Social Security Act, requesting review and reversal of the Commissioner of Social Security's denial of her application for disability insurance benefits and supplemental security income. (Doc. 3 (Compl.)) Pending before the Court are Bileau's motion seeking an order reversing the Commissioner's decision (Doc. 11), and the Commissioner's motion seeking an order reversing and remanding her decision (Doc. 18). Bileau filed a reply to the Commissioner's motion. (Doc. 19.)

The Administrative Law Judge ("ALJ") relied on assessments of state agency medical and psychological consultants who reviewed the claimant's conditions in connection with her first application in November 2010, which resulted in an unfavorable decision in March 2012. A new application was filed in June 2013, and after this court reversed and remanded the decision of the ALJ in July 2014, a second consolidated hearing was held on March 17, 2015, resulting in a second unfavorable decision in April 2015. Claimant's appeal includes a claim that the ALJ did not correctly weigh opinion evidence from her treating sources, including psychologist Alexandra Scarlett.

In her 2015 opinion, ALJ Sutker gives significant weight to the assessments of the state agency psychological consultants, Howard Goldberg, Ph.D., whose opinion is dated September 19, 2013, Roy Shapiro, Ph.D., whose opinion is dated January 13, 2014, and Richard Root, Ed.D., who performed a psychological evaluation in April 2010. ALJ Sutker gives lesser weight to Ms. Scarlett, who submitted evidence in 2013 and 2015. Furthermore, claimant submitted evidence after January 2014 from Ewa Arnold, M.D., licensed mental health counselor Therese Zocchi, and Dr. Amalia Lee, whose opinions the state agency consultants did not have an opportunity to assess.

Since there is evidence that Ms. Bileau's psychological condition may have significantly worsened after January 2014, and up to the date of the hearing on March 2015, and since the ALJ relied primarily on the opinions of Drs. Goldberg and Shapiro and Mr. Root, the ALJ's "reasoning and adherence" to 20 C.F.R. § 404.1527(c) are not sufficiently clear to determine if substantial evidence supports her decision. See Atwater v. Astrue, 512 F. App'x 67, 70 (2d Cir. 2013). Accordingly, it is ORDERED that Bileau's motion to reverse (Doc. 11) is granted in part and denied in part, and the Commissioner's motion to reverse and remand (Doc. 18) is granted. The decision of the Commissioner is reversed pursuant to sentence four of 42 U.S.C. § 405(g), with remand to the Commissioner for further proceedings. See Shalala v. Schaefer, 509 U.S. 292, 296-97 & n.1 (1993). The Court declines to order the Commissioner to award benefits.

On remand, Appeals Council will remand this case to a different ALJ for further proceedings, including a supplemental hearing. The assigned ALJ shall either obtain updated opinions from the psychological consultants relied upon by the ALJ or retain new qualified experts who shall assess claimant's psychological evidence submitted at the 2013 and 2015 hearings. The ALJ shall also admit the opinion of Dr. Korgeski, who performed a consultative examination in connection with Bileau's 2013 application. The ALJ shall properly assess the opinion evidence

under the relevant regulations and social security rulings and take any further action necessary to complete the administrative record and issue a new decision.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 5th day of October, 2016.

/s/ J. Garvan Murtha
Honorable J. Garvan Murtha
United States District Judge